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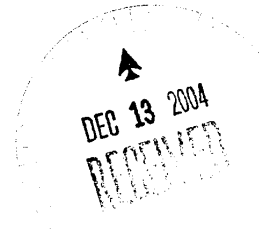
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December 10, 2004

Via Federal Express
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006



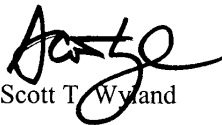
Re: STB Docket No. AB-167 (Sub-No. 1095X), Consolidation Rail Corporation –
Abandonment Exemption – In Lancaster and Chester Counties, PA

Dear Mr. Williams:

Enclosed please find an original and ten copies of the Response of Conestoga, Martic, Providence, Bart, Eden and Sadsbury Townships to the motion filed by Lancaster County on November 22, 2004 in the subject proceeding.

Please acknowledge receipt of this filing by returning the enclosed additional copy of this letter to me date stamped in the enclosed stamped, self-addressed envelope.

Very truly yours,


Scott T. Wyland

STW:smw
enclosures
cc: per service list

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

Before the
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. AB-167 (Sub No. 1095X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
LANCASTER AND CHESTER COUNTIES, PA**

**RESPONSE OF CONESTOGA, MARTIC, PROVIDENCE, BART,
EDEN AND SADBURY TOWNSHIPS TO MOTION OF
LANCASTER COUNTY TO REMOVE HISTORIC PRESERVATION
CONDITIONS AND TO GRANT ABANDONMENT AUTHORITY**

**SCOTT T. WYLAND, ESQUIRE
JOSEPH A. KLEIN, ESQUIRE**

Attorneys for Sadsbury Township, Eden Township, Bart
Township, Providence Township, Martic Township, and
Conestoga Township

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Dated: December 10, 2004

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. AB-167 (Sub No. 1095X)
CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
LANCASTER AND CHESTER COUNTIES, PA

RESPONSE OF CONESTOGA, MARTIC, PROVIDENCE, BART,
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CONDITIONS AND TO GRANT ABANDONMENT AUTHORITY

AND NOW, comes Conestoga Township, Martic Township, Providence Township, Bart Township, Eden Township and Sadsbury Township (collectively, "Townships") and set forth the following response to County of Lancaster's Motion to Remove Historic Preservation Conditions and to Grant Abandonment Authority:

On November 22, 2004, the County of Lancaster filed a Motion to Remove Historic Preservation Conditions and to Grant Abandonment Authority. The Townships are the equitable owners of the rail line at issue, being parties to an agreement with Norfolk Southern (successor in interest to the former owner, Consolidated Rail Corporation). Under the Agreement, Norfolk Southern is to transfer title of the rail line to the Townships. The purpose of this filing is to provide the Townships' response to the County of Lancaster's Motion.

First, the County of Lancaster has no legally cognizable interest in the rail line to make such a request. Although the County of Lancaster indeed initiated condemnation proceedings, the County is barred by Pennsylvania's Second Class County Code from acquiring the line

without the railroad's permission. The power of eminent domain conferred upon a county such as Lancaster County is limited in nature and under the provisions of 16 P.S. § 2402 ". . . the right-of-way of a railroad company shall not be acquired or occupied without the consent of the company owning or operating or in possession of said railroad." Norfolk Southern in fact has not granted permission to the County and thus the County's condemnation efforts are wholly invalid. Accordingly, the County has no pretension to title or interest in the line.

In its Motion, Lancaster County contends that in light of its efforts to take the rail line at issue through its dubious condemnation filing, the additional documentation and historic preservation requirements are no longer necessary. While the Townships would agree that it would have been desirous to avoid unnecessary and meaningless documentation of the line in question and its necessary delay in the transfer of the property to the Townships, the Board considered and rejected such a suggestion earlier in this proceeding. In fact, the documentation required under the Memorandum of Agreement was established with knowledge by the Board that the property is to be conveyed to the Townships. That fact has not changed, despite the County's assertions of its own quite doubtful putative interest in the line. The "adverse effect" that triggered the Section 106 process in this case is presumed to spring from the transfer of title to the Townships. Even if the County had the legal authority to take the land, which it most decidedly does not, transfer to the County as opposed to the Townships is of no moment whatsoever as it pertains to adverse effects and the need to complete the Section 106 process.

As evidence of its own desire to take over the responsibilities of documentation, the County points to its response to preliminary objections in the County's condemnation case. The County's gratuitous assertion in a state court filing, however, is not a binding contractual promise. The owner must do the documentation, and the County is not the owner. The County

of Lancaster made public assertions in the past in litigation before the Pennsylvania Public Utility Commission that it did not desire to own the line in question and that it fully supported the Townships' acquisition of the line. The Board here should decline to rely on a statement of changeable and vacillating policy by the County. Lancaster County may renege on its unilateral assertion in its response to preliminary objections, as it has done already with respect to its on-the-record support for the Township's acquisition of the line. Having apparently offered to shoulder Norfolk Southern's obligations under the MOA, the County now seeks to avoid those obligations altogether.

On page four of its Motion, Lancaster County asserts that its requested relief will also assure that the Enola branch is acquired and preserved by Lancaster County. Of course, where the County lacks the legal authority to obtain the property under its own enabling legislation, such assurances by the County are meaningless, if not misleading.

Moreover, the County's assertion at page 5 of its motion that through its condemnation action the County "can ensure that all parties are appropriately compensated" cannot be offered in good faith inasmuch as the County asserted in paragraph 15 of its Declaration of Taking that the property "is of no value or can be deemed a liability . . ." The County paid no compensation with its Declaration of Taking. The Townships are not certain what impression the County was trying to create by such an assertion here. The County's actions to date are designed solely to wrest the property from the Townships for *no* compensation, and the County's assertion that it will ensure that all parties are "appropriately compensated" should be disregarded as injudicious and inaccurate "spin," at best.

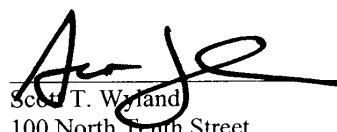
In short, Lancaster County's Motion has no merit and represents a request by a party with no pretension to title that, if granted, would lead to the possibility of additional appeals from the

disposition of the motion before the Board with the inevitable lengthy delays associated with such appeal.

WHEREFORE, the Townships respectfully request that the Motion of Lancaster County be denied in its entirety.

Respectfully submitted,

HAWKE MCKEON SNISCAK & KENNARD LLP



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Conestoga Township

DATED: December 10, 2004

CERTIFICATE OF SERVICE

I, Scott T. Wyland, Esquire, hereby certify that I have this day served the foregoing document by First Class U.S. Mail, postage prepaid, deposited at Harrisburg, Pennsylvania, addressed to the following:

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Scott T. Wyland

DATED: December 10, 2004